



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2015-0071; FRL-9926-98-OAR]

RIN 2060-AS57

Prevention of Significant Deterioration Permitting for Greenhouse Gases: Providing Option for Rescission of EPA-Issued Tailoring Rule Step 2 Prevention of Significant Deterioration Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to amend the federal Prevention of Significant Deterioration (PSD) program regulations to allow for rescission of certain PSD permits issued by the EPA and delegated reviewing authorities under Step 2 of the Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule (Tailoring Rule). We are taking this action in order to provide a mechanism for the EPA and delegated reviewing authorities to rescind PSD permits that are no longer required in light of the United States (U.S.) Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the amended appeals court judgment in *Coalition for Responsible Regulation (Coalition) v. EPA*, vacating that rule. These decisions determined that Step 2 of the Tailoring Rule was not required under the Clean Air Act (CAA or Act) and vacated the EPA regulations implementing Step 2. When effective, this action will authorize the EPA and delegated reviewing authorities to rescind Step 2 PSD permits in response to requests from

applicants who can demonstrate that they are eligible for permit rescission.

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. If anyone contacts the EPA requesting to speak at a public hearing by May 18, 2015, the EPA will hold a public hearing on May 22, 2015 in Research Triangle Park, North Carolina.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0071, by one of the following methods:

- *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*. Include docket ID No. EPA-HQ-OAR-2015-0071 in the subject line of the message.
- *Fax: (202) 566-9744*.
- *Mail: U.S. Environmental Protection Agency, EPA Docket Center, Mail Code 28221T, Attention Docket ID No. EPA-HQ-OAR-2015-0071, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.*
- *Hand/Courier Delivery: EPA Docket Center, Room 3334, EPA William Jefferson Clinton West Building, 1301 Constitution Avenue, NW, Washington, D.C. 20004, Attention Docket ID No. EPA-HQ-OAR-2015-0071. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.*

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2015-0071. The

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any CD you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Room 3334, EPA William Jefferson Clinton West Building, 1301 Constitution Avenue,

NW, Washington, D.C. 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Questions concerning this direct final should be addressed to Mrs. Jessica Montañez, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504-03), Research Triangle Park, NC 27711, telephone number (919) 541-3407, email at *montanez.jessica@epa.gov*. To request a public hearing or questions concerning a public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504-01), Research Triangle Park, NC 27711, telephone number (919) 541-0641, email at *long.pam@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial amendment and anticipate no adverse comment. This action narrowly amends the permit rescission provisions in the federal PSD regulations found in 40 CFR 52.21(w) to allow for the rescission of EPA-issued PSD permits¹ that were issued under Step 2 of the Tailoring Rule² permitting regulations.

The U.S. Supreme Court determined the permitting requirements under Step 2 of the Tailoring Rule to be invalid in *UARG v. EPA*, 134 S. Ct. 2427 (2014). The Supreme Court affirmed in part and reversed in part an earlier decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). In further proceedings upon consideration of the Supreme Court

¹ For purposes of this rule, the phrases “EPA-issued PSD permits that were issued under Step 2 of the Tailoring Rule” and “EPA-issued Step 2 PSD permits” are intended to have the same meaning. The use of the term “EPA-issued” in both phrases includes PSD permits issued by the EPA as well as permits issued by state or local reviewing authorities exercising federal law authority delegated by an EPA Regional Office under 40 CFR 52.21(u).

² Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010); 40 CFR 52.21(b)(49)(v).

decision, the D.C. Circuit amended its judgment in the *Coalition* case. The Amended Judgment vacated particular provisions of the EPA’s regulations implementing Step 2 of the Tailoring Rule.

This direct final action does not itself rescind any permits; it only provides the regulatory mechanism through which the EPA or state or local program administering the PSD program through a delegation of federal authority from the EPA could rescind, upon request of a source, an EPA-issued Step 2 PSD permit consistent with the U.S. Supreme Court decision and the amended judgment of the D.C. Circuit vacating the regulations. However, in the “Proposed Rules” section of this *Federal Register* publication, we also are publishing a separate document that will serve as the proposed rule to amend the same federal PSD regulations at 40 CFR 52.21(w) if adverse comments are received on this direct final rule. If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on the proposed rule. We will not institute a second comment period on the proposed rule, and any parties interested in commenting must do so at this time. For further information about commenting on the proposed rule, see the **ADDRESSES** section in that separate document in this *Federal Register* publication.

II. Does this action apply to me?

The entities potentially affected by this rule include new and modified stationary sources that obtained an EPA-issued Step 2 PSD permit under the federal PSD regulations found at 40 CFR 52.21 solely because the source or a modification of the source was expected to emit or increase GHG emissions over the applicable thresholds. This includes (1) sources classified as major for PSD purposes solely on the basis of their potential GHG emissions; and (2) sources

emitting major amounts of other pollutants that experienced a modification resulting in an increase of only GHG emissions above the applicable levels in the EPA regulations. Entities affected by this rule may also include state or local reviewing authorities that have been delegated federal authority to implement the federal PSD regulations under 40 CFR 52.21(u) and that have issued Step 2 PSD permits to sources within their jurisdiction. This rule does not address the requirements for approval of a PSD program into a state implementation plan (40 CFR 51.166) or the rescission of PSD permits issued by states and local programs with such approved programs. Stationary sources with questions on the PSD permitting obligations arising from Step 2 PSD permits issued by state or local reviewing authorities under the permitting programs approved into state implementation plans should review the governing statutory provisions and provisions in the applicable approved state or local permitting program to determine how to address any Step 2 PSD permitting issues and consult with the EPA as necessary.

III. Background

A. *What is the PSD Program?*

Part C of title I of the Act contains the requirements for a component of the major New Source Review (NSR) program known as the PSD program. This program sets forth procedures for the construction review and permitting of new and modified stationary sources of air pollution locating in areas meeting the National Ambient Air Quality Standards (NAAQS) (“attainment” areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment (“unclassifiable” areas).

The applicability of PSD to a particular source must be determined in advance of construction of a new source or major modification of an existing source and is pollutant-

specific. Once a source is determined to be subject to PSD, among other requirements, the source must demonstrate that it will not cause or contribute to a violation of any NAAQS or PSD increment,³ and that it will use the Best Available Control Technology (BACT).⁴

The reviewing authority must provide notice of its preliminary decision on a source's application for a PSD permit, and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the reviewing authority must issue a final determination on the permit.

B. What is the Tailoring Rule?

On June 3, 2010, the EPA issued a final rule, known as the Tailoring Rule, which phased in permitting requirements for GHG emissions from stationary sources under the CAA PSD and title V permitting programs (75 FR 31514).

For Step 1 of the Tailoring Rule, which began on January 2, 2011, PSD or title V requirements applied to sources' GHG emissions only if the sources were subject to PSD or title V "anyway" due to their emissions of non-GHG pollutants. These sources are referred to as "anyway sources." Step 2 of the Tailoring Rule, which began on July 1, 2011, applied the PSD and title V permitting requirements under the CAA to sources that were classified as major, and, thus, required to obtain a permit, based solely on their potential GHG emissions and to modifications of otherwise major sources that required a PSD permit because they increased only GHG above applicable levels in the EPA regulations.

C. What is the UARG v. EPA decision and why does the EPA need to revise the permit rescission provisions under 40 CFR 52.21(w) in light of the decision?

1. What is the *UARG v. EPA* U.S. Supreme Court decision?

³ CAA section 165(a)(3).

⁴ CAA section 165(a)(4).

On June 23, 2014, the U.S. Supreme Court issued a decision in *UARG v. EPA*, 134 S. Ct. 2427, addressing the application of stationary source permitting requirements to GHGs. In summary, the U.S. Supreme Court said that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source (or a modification thereof) is required to obtain a PSD or title V permit,⁵ and declared that the EPA regulations implementing that approach for determining permitting applicability are invalid. However, the U.S. Supreme Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of conventional pollutants (i.e., non-GHG pollutants), contain limitations on GHG emissions based on the application of BACT. That is, the ruling effectively upheld PSD permitting requirements for GHG emissions under Step 1 of the Tailoring Rule for “anyway sources,” and invalidated PSD permitting requirements for Step 2 sources.

To describe the EPA’s preliminary views on the U.S. Supreme Court decision, on July 24, 2014, the EPA issued a memorandum titled, “Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court’s Decision in *UARG v. EPA*” (Preliminary Views Memo)⁶. In that memorandum, the EPA explained that it “will no longer require PSD ... permits for Step 2 sources” (Preliminary Views Memo at 2) and that the EPA expected “to provide additional views in the future with respect to Step 2 sources that had already obtained a PSD permit ...” (Preliminary Views Memo at 4).

⁵ Among other things, title V of the CAA requires all major stationary sources of air pollution and certain other sources to apply for a title V operating permit that includes emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA. The title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements, but does not generally impose new substantive air quality control requirements. The title V program is implemented through regulations promulgated under 40 CFR part 70, for programs implemented by state or local agencies and tribes, and 40 CFR part 71, for programs generally implemented by the EPA.

⁶ <http://epa.gov/nsr/documents/20140724memo.pdf>

The EPA provided additional views regarding EPA-issued Step 2 permits when it issued two memoranda on December 19, 2014. In the memorandum issued by the Office of Air and Radiation (OAR) and titled, “Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements” (OAR Next Steps Memo)⁷, the EPA explained that it intended to complete this rulemaking “authorizing the rescission of Step 2 PSD permits.” In the second memorandum, which was issued by the Office of Enforcement and Compliance Assurance (OECA) and titled, “No Action Assurance Regarding EPA-Issued Step 2 Prevention of Significant Deterioration Permits and Related Title V Requirements Following *Utility Air Regulatory Group v. Environmental Protection Agency*” (OECA No Action Assurance Memo)⁸, OECA issued a narrowly tailored No Action Assurance for sources with EPA-issued Step 2 PSD permits. The OECA No Action Assurance Memo establishes that the EPA will exercise its enforcement discretion not to pursue enforcement of the terms and conditions relating to GHGs in a source’s EPA-issued Step 2 PSD permit, and for related GHG terms and conditions that are contained in the source’s title V permit, if any.

The Supreme Court decisions affirmed in part and reversed in part an earlier decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). In further proceedings upon consideration of the opinion in *UARG*, on April 10, the D.C. Circuit in *Coalition* issued an amended judgment in accordance with that decision. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09-1322, 10-073, 10-1092 and 10-1167 (D.C. Cir. April 10, 2015) (Amended Judgment). As relevant to this rulemaking action, the court ordered that the EPA regulations under review (including 40 CFR 52.21(b)(49)(v)) be vacated to the

⁷ http://epa.gov/nsr/ghgdocs/Step2PermitRescissionsMemoFinal_12-19-14.pdf

⁸ http://epa.gov/nsr/ghgdocs/OECANoActionAssuranceMemo_December192014.pdf

extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.

We are aware that between the effective date of Step 2 (July 1, 2011) and the date of the *UARG v. EPA* decision (June 23, 2014), several sources obtained EPA-issued Step 2 PSD permits either directly from the EPA or from state or local agencies with delegated PSD programs under 40 CFR 52.21 because the sources (or modifications thereof) were classified as “major” solely on the basis of their GHG emissions. For some of these sources, the appropriate reviewing authorities also issued title V permits that incorporated the terms and conditions of the EPA-issued Step 2 PSD permits. To ensure this rule covers all stationary sources eligible for rescission of EPA-issued Step 2 PSD permits, this action provides that owners or operators of stationary sources with EPA-issued Step 2 PSD permits with final permit issuance dates from July 1, 2011 to 60 days after the effective date of this rule would be able to request a permit rescission from EPA or delegated reviewing authorities as applicable. For more information on the process for requesting a permit rescission for EPA-issued Step 2 PSD permits, see section V of this action titled, “Direct Final Action.”

2. Why are we revising the permit rescission provisions under 40 CFR 52.21(w) in light of the U.S. Supreme Court decision in *UARG v. EPA* and the amended appeals court judgment in *Coalition*?

To implement the U.S. Supreme Court’s decision and the amended appeals court judgment vacating the regulations implementing Step 2 of the Tailoring Rule, it is necessary to undertake a process to rescind PSD Step 2 permits. The EPA’s implementing permitting regulations at 40 CFR 52.21 provide that “[a]ny [PSD] permit issued under this section or a prior

version of this section shall remain in effect, unless and until it expires ... or is rescinded” (40 CFR 52.21(w)(1)).

Section 52.21(w) provides authority for a source holding a PSD permit to request rescission of the permit and for the EPA to “grant an application for rescission if the applicant shows that this section [40 CFR 52.21] would not apply to the source or modification.” However, as currently written, the scope of this rescission authority is limited to permits issued under 40 CFR 52.21 as in effect on or before July 30, 1987. Since any EPA-issued Step 2 PSD permits were issued under regulations effective after July 30, 1987, the rescission authority in 40 CFR 52.21(w) is not currently available to sources with EPA-issued Step 2 PSD permits. This rulemaking action is a narrow revision to 52.21(w) solely to enable the rescission of Step 2 PSD permits consistent with the U.S. Supreme Court decision and the D.C. Circuit amended judgment.

This rule does not address any issues concerning the federal PSD permit rescission regulations at 40 CFR 52.21(w) that are not related to the Supreme Court decision in *UARG v. EPA* and the amended appeals court judgment vacating the Step 2 regulations. We recognize, however, that other circumstances may arise in the future where the appropriate course of action may be permit rescission. We would expect these circumstances to be rare. Under the current rules, a rulemaking would need to be undertaken in each such circumstance as we are doing here. Therefore, the EPA is developing a separate rulemaking action that will provide an opportunity for the public to comment on any other situations where the July 30, 1987 date in 52.21(w) may be an impediment to the rescission of PSD permits under particular circumstances where that might be appropriate.

IV. Direct Final Action

In this action, the EPA is revising 40 CFR 52.21(w)(2) by adding references to 40 CFR 52.21(49)(b)(v)(a) and (b) to allow for rescission of any EPA-issued Step 2 PSD permits upon request by the permitted source, which is consistent with the EPA's understanding of the Supreme Court decision and the amended appeals court judgment vacating the regulations. In addition, the EPA is adding the following sentence to 40 CFR 52.21(w)(3) to make clear that PSD requirements no longer apply to Step 2 sources: "As a result of a decision of the U.S. Supreme Court, this section does not apply to sources or modifications that meet only the applicability criteria in 40 CFR 52.21(b)(49)(v)."

This regulatory action does not make any change to 40 CFR 52.21(w)(1) or (4). In addition, it does not affect the standard for determining whether a source is eligible for permit rescission under 40 CFR 52.21(w)(3). It serves only to revise 40 CFR 52.21(w)(2)-(3) of the EPA's federal PSD regulations to authorize the EPA to undertake permit rescissions for EPA-issued Step 2 PSD permits. As the EPA previously explained in its December 19, 2014, OAR Next Steps Memo, once this rule is final, sources with EPA-issued Step 2 PSD permits will be able to seek a permit rescission from the EPA or delegated state or local reviewing authority.

Specifically, consistent with the 2014 OAR Next Steps Memo at page 3, the EPA expects that PSD permit-holders interested in qualifying for the rescission of an EPA-issued Step 2 PSD permit under 40 CFR 52.21(w) will need to provide information to demonstrate that either (1) the source did not, at the time the source obtained its EPA-issued Step 2 PSD permit, emit or have the potential to emit any regulated pollutant other than GHGs above the major source threshold applicable to that type of source; or (2) a modification at a source emitting major amounts of a regulated NSR pollutant other than GHGs did not result in an increase in emissions of any regulated pollutant other than GHGs in an amount equal to or greater than the applicable

significance level for that pollutant. Furthermore, the EPA intends to consider whether the EPA or another reviewing authority is relying on the EPA-issued Step 2 PSD permit for any other regulatory purpose. Rescission of a PSD permit that is no longer required should not extend to eliminate regulatory obligations that remain regarding non GHG-pollutants or inadvertently place the permitted source in a situation where it may be out of compliance with other requirements that the PSD permit satisfied. For example, as noted in the memoranda mentioned previously, a source with an EPA-issued Step 2 PSD permit may now have other regulatory or permitting obligations (e.g., minor NSR requirements), which generally concern sources emitting pollutants subject to a NAAQS. The source may have previously not needed to obtain a minor source permit because it used its Step 2 permit to satisfy its preconstruction permitting obligations, but it might now need to obtain a minor NSR permit. Until such time as the source and the permitting authority can determine whether and how to replace Step 2 PSD permit conditions for such pollutants with a permit satisfying minor NSR requirements, continued compliance with PSD permit terms and conditions for such permits is important to protect the NAAQS, and rescission may, thus, be premature. Further, if the GHG condition in an EPA-issued Step 2 PSD permit has been used to satisfy another state or federal requirement, rescission may not be appropriate without assurances that another method will be established for complying with other federal, state, and local requirements (e.g., if the state is presuming the source builds consistent with the efficiency requirement in the EPA-issued Step 2 permit in order to satisfy other state air pollution requirements). In sum, the rescission of any EPA-issued Step 2 PSD permits should not proceed without an understanding of how minor source construction permitting requirements and other legal obligations will be met going forward. Since the EPA generally does not issue construction permits for minor sources except in Indian country, the

EPA Regional Offices and sources holding EPA-issued Step 2 PSD permits should consult with the appropriate state or local reviewing authorities and develop a plan to ensure that sources remain in compliance with applicable minor source and other legal requirements after rescission of EPA-issued Step 2 PSD permits.

As part of the rescission process for EPA-issued Step 2 PSD permits, the EPA anticipates that some sources will also want to seek revisions to title V operating permits that include the EPA-issued Step 2 PSD permit terms and conditions. Therefore, once an EPA-issued Step 2 PSD permit is formally rescinded by the EPA or delegated reviewing authority, the EPA or delegated reviewing authority will encourage the applicable title V state or local permitting authorities to take appropriate actions with the sources to resolve any issues related to the incorporation of the EPA-issued PSD Step 2 permit requirements into title V permits that have already been issued and as further described in the OAR Next Steps Memo at page 4. The EPA is not revising its title V regulations in this action because the EPA believes that its existing title V regulations contain sufficient procedures for the actions discussed in the OAR Next Steps Memo and no revisions to EPA's title V regulations are necessary to enable these steps to proceed.

This action only contains the regulatory revisions necessary to allow for rescission of EPA-issued Step 2 PSD permits in order to conform to the U.S. Supreme Court decision and the amended judgment of the D.C. Circuit. In this action, the EPA is not making any other regulatory changes in response to the U.S. Supreme Court's decision or the amended judgment of the D.C. Circuit. The EPA intends to take additional rulemaking action to remove the vacated provisions from the Code of Federal Regulations and make further revisions to its PSD and Title V regulations, as appropriate.

V. Environmental Justice Considerations

This action amends one provision of the federal PSD program regulations to allow for the rescission of EPA-issued Step 2 PSD permits in order to conform to a decision by the U.S. Supreme Court that declared invalid regulations that implemented the requirement that Step 2 sources obtain PSD permits and an amended judgment by the D.C. Circuit vacating those regulations. When effective, this action will authorize the EPA and delegated reviewing authorities to rescind Step 2 PSD permits in response to requests from applicants who can demonstrate that they are eligible for permit rescission. Therefore, this action itself does not compel any specific permit action that will affect the fair treatment and meaningful involvement of all people. Rather, it ensures that the EPA has the authority to implement the U.S. Supreme Court's decision and the amended judgment of the D.C. Circuit. Rescission of any EPA-issued Step 2 PSD permits under this rule revision would follow all applicable permitting requirements.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0003.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is

any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule relieves regulatory burden by providing a mechanism for the EPA and delegated reviewing authorities to rescind PSD permits that are no longer required in light of the U.S. Supreme Court decision in *UARG v. EPA*, which invalidates Step 2 of the Tailoring Rule and of the amended judgment of the D.C. Circuit vacating that rule. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector to rescind these EPA-issued Step 2 PSD permits. Sources can ask for rescission of their EPA-issued Step 2 PSD permits at their discretion.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. Although the Tribal Air Rule (76 FR 38748, July 1, 2011) under the CAA gives tribes the opportunity to request and be granted delegation of the federal PSD program found at 40 CFR

52.21 to issue PSD permits, there are no tribal agencies currently implementing the federal PSD permitting program. As a result, this action will not affect any tribal reviewing authorities. In addition, any tribally-owned sources with EPA-issued Step 2 PSD permits have the discretion to request the EPA to rescind their permit. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in

the section VI titled, “Environmental Justice Considerations” for this action.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Determination under Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to provisions of section 307(d). Section 307(d) establishes procedural requirements specific to rulemaking under the CAA. Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

VII. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the D.C. Circuit within 60 days from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2) of the CAA).

Parties with objections to this direct final rule are encouraged to file any comment in response to the parallel notice of proposed rulemaking for this action published in the “Proposed Rules” section of this *Federal Register* publication, rather than file an immediate petition for judicial review of this direct final rule to allow the EPA to withdraw this direct final rule and

address the comment(s) in the proposed rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, National ambient air quality standards, New source review, Nitrogen dioxide, Ozone, Particulate matter, Permit rescissions, Preconstruction permitting, Sulfur oxides, Tailoring rule, Volatile organic compounds.

Dated: April 30, 2015.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTAION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A--General Provisions

2. Section 52.21 is amended by revising paragraphs (w)(2) and (3) to read as follows:

§52.21 Prevention of significant deterioration of air quality.

* * * * *

(w) * * *

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification may request that the Administrator rescind the permit or a particular portion of the permit if the permit for the source or modification was issued:

(i) Under §52.21 as in effect on July 30, 1987 or any earlier version of this section;

(ii) Under §52.21 between July 1, 2011 and **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** to a source that was classified as a major stationary source under paragraph (b)(1) of this section solely on the basis of potential emissions of greenhouse gases, which were defined as a regulated NSR pollutant through the application of paragraph (b)(49)(v)(a) of this section as in effect during this time period; or

(iii) Under §52.21 between July 1, 2011 and **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** for a modification that was classified as a major modification under paragraph (b)(2) solely on the basis of an increase in emissions of

greenhouse gases, which were defined as a regulated NSR pollutant through the application of paragraph (b)(49)(v)(b) of this section as in effect during this time period.

(3) The Administrator shall grant an application for rescission if the application shows that this section would not apply to the source or modification. As a result of a decision of the United States Supreme Court, this section does not apply to sources or modifications that meet only the applicability criteria in paragraph (b)(49)(v) of this section.

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[FR Doc. 2015-10628 Filed: 5/6/2015 08:45 am; Publication Date: 5/7/2015]